

MINUTES  
Texas Real Estate Commission  
November 8, 1999  
Conference Room 235, Texas Real Estate Commission  
Austin, Texas

Chairman Jay Brummett called the regularly scheduled meeting of the Texas Real Estate Commission to order at 9:00 a.m., Monday, November 8, 1999. In addition to Chairman Brummett, members present were Michael Brodie, Ramon Cantu, James Austin, Deanna Mayfield, Lawrence Jokl and Kay Sutton. Chris Folmer and Maria Gonzalez-Gil were absent.

Staff present were: Wayne Thorburn, Administrator; Mark Moseley, General Counsel; Mia Nieman, Director of Licensing and Education, Michelle Bowen, Acting Director of Licensing and Education; Christina Kaiser, Education Section Manager; Alan Waters, Director of Staff Services; Loretta DeHay, Director of Enforcement; Glen Bridge, Director of Information Services; Patricia Holder, Executive Assistant and Deborah Kennedy, Administrative Assistant.

After calling the meeting to order, Chairman Brummett led the attendees in the pledge of allegiance and the Texas pledge of allegiance. The Chairman introduced the three new Commission members-Ramon "Mick" Cantu from Houston, James Austin from Fort Worth and Lawrence Jokl from Brownsville.

Chairman Brummett moved to agenda item two, minutes of the September 20, 1999 Commission meeting. Ms. Sutton, seconded by Mr. Austin, moved to approve the minutes as mailed. The motion was adopted by unanimous vote. Ms. Sutton, seconded by Mr. Brodie, moved to excuse the absences of Ms. Folmer and Ms. Gonzalez-Gil and also to excuse Ms. Mayfield's absence from the September 20, 1999 meeting. The motion was adopted by unanimous vote.

Chairman Brummett moved to agenda item three, staff reports; committee reports. Commissioner Jokl reported on a meeting of the Asociación Mexicana de Profesionales Inmobiliarios, A.C. held in Monterrey, Mexico attended by Chairman Brummett, Commissioner Jokl and Mr. Thorburn. Chairman Brummett introduced Gloria Austin, Commissioner Austin's wife.

Ms. DeHay reported on the E1 report which tracks complaint activity and the types of violations that were initiating the most complaints.

Mr. Bridge reported on SB 974, "Relating to the creation of a task force and demonstration project regarding the provision of certain state agency and local government services to the general public and to regulated entities through the Internet." TREC will be accepting applications for licensure and renewals via the Internet as part of the demonstration project. This should be in place

by the end of the month. Mr. Bridge reported that he had received three comments from educators and quite a few suggestions from the Nanci Hawes Real Estate School staff concerning the MCE forms disks that had been distributed at and after the last meeting.

Michelle Bowens, Acting Director of Licensing and Education, introduced Mia Nieman, the new Director of Licensing and Education. Ms. Nieman is a real estate licensee and previously worked at the Texas Natural Resource Conservation Commission where she was a budget analyst. Mr. Thorburn thanked Ms. Bowens for acting as Director of Licensing and Education during the transition period and reported that she would be assisting Ms. Nieman during her orientation period.

Mr. Waters reported on the Annual Report on Measures, the Annual Financial Report and the reports from KPMG, the internal auditor. Mr. Waters stated that a meeting of the Investment Committee was planned before the next meeting of the Commission on December 13, 1999.

Mr. Thorburn reported that Brian Francis had left his position of Assistant Administrator and taken a position as the Deputy Director at the Texas Department of Licensing and Regulation. Interviews for a replacement would be starting on November 9. Mr. Thorburn hoped to fill the position by the first of December.

Chairman Brummett moved to agenda item four, public comments. There were no public comments.

Chairman Brummett moved to agenda item five, discussion of and possible action to adopt amendments to 22 TAC §535.208, concerning application for an inspector license and §535.216, concerning renewal of an inspector license. Mr. Moseley presented item five for discussion. After discussion, Ms. Sutton, seconded by Mr. Austin, moved to adopt the amendments to 22 TAC §535.208, concerning application for an inspector license. The motion was adopted by unanimous vote. Ms. Sutton, seconded by Mr. Cantu, moved to adopt the amendments to §535.216, concerning renewal of an inspector license. The motion was adopted by unanimous vote.

The Chairman moved to agenda item six, discussion and possible action to extend effectiveness of emergency adoption of 22 TAC §§537.11, 537.43 and 537.44, concerning standard contract forms. Mr. Moseley presented item six which would extend to December 31, 1999, the effectiveness of the emergency adoption of the Addendum for Property Subject to Mandatory Membership in an Owners' Association and Subdivision Information, Including Resale Certificate for Property Subject to Mandatory Membership in an Owners' Association for discussion. Ms. Sutton, seconded by Ms. Mayfield, moved to extend the effectiveness of the rules. The motion was adopted by unanimous vote.

Mr. Moseley presented agenda item seven, discussion and possible action to propose amendments to 22 TAC Chapter 537 concerning standard contract forms and to adopt the amendments on an emergency basis effective January 1, 2000. This would adopt eight revised contract forms. They would include the two statutory notices regarding property in an owners' association and property subject to annexation. The revisions included replacing the "19\_\_\_\_" with "\_\_\_\_\_." Avis Wukasch, Broker-Lawyer Committee, spoke concerning the recommendations of the committee. After discussion Ms. Sutton, seconded by Mr. Brodie, moved to adopt the amendments on an emergency basis. The motion was adopted by unanimous vote. Mr. Brodie, seconded by Ms. Sutton, moved to propose the amendments to 22 TAC Chapter 537, concerning standard contract forms. The motion was adopted by unanimous vote.

Mr. Moseley presented agenda item eight, discussion and possible action to adopt the review of §§535.61-535.64, §535.66, §§535.68-535.70, as modified by repeals and new sections, concerning provisions of The Real Estate License Act. After discussion, Mr. Brodie, seconded by Ms. Sutton, moved to adopt the review as modified by repeals and amendments. The motion was adopted by unanimous vote.

Mr. Moseley presented agenda item nine, discussion and possible action to adopt the review of 22 TAC Chapter 537, concerning contract forms, as amended. After discussion, Ms. Mayfield, seconded by Mr. Brodie, moved to adopt the review as amended.

Chairman Brummett moved to agenda item ten, executive session to discuss pending litigation pursuant to Texas Government Code, § 551.071(1) and, if necessary, to receive legal advice from general counsel on posted agenda items under Texas Government Code, §551.071(2). The executive session began at 9:35 a.m.

The meeting was called back to order at 10:02 a.m. by Chairman Brummett. The Chairman moved to agenda item eleven, discussion and possible action to authorize payments from recovery funds.

RF 00-001 Rose Lewis v. Billy G. Wheeler, in the amount of \$1,000 as actual damages and \$1,200 in attorney fees. Mr. Brodie, seconded by Ms. Sutton, moved approval. The motion was adopted by unanimous vote.

RF 00-0003 Martha Kocurek, Trustee v. Austin Smith Properties, Inc., in the amount of \$100,000 as actual damages. Ms. Sutton, seconded by Mr. Cantu, moved approval. The motion was adopted by unanimous vote.

IRF 00-001 Richard and Pamela Young v. James A. Sutton, in the amount of \$7,500

as actual damages. Ms. Mayfield, seconded by Mr. Austin, moved approval. The motion was adopted by unanimous vote.

RF 97-002 Lewis and Lana Cook v. Carol Ann Clayton, licensee seeks complete release of judgment for \$10,000. Judgment amount paid in 1996 now approximately 447,500 with accrued interest. Mr. Brodie, seconded by Ms. Mayfield, moved that general counsel, Mark Moseley, negotiate repayment and report back to the Commission in December. The motion was adopted by unanimous vote.

Mr. Brummett presented agenda item twelve, discussion and possible action on HUD/FHA appraisal report requirements for discussion. This item pertained to new requirements from HUD concerning appraisals performed by HUD appraisers. Comments were offered by Jim Havens, member of the Texas Real Estate Inspector Committee; and Benny McMahan, Texas Association of Realtors. Mr. Moseley gave his opinion of the current requirements and the possible ramifications for the consumer. Renil Linér, Commissioner for the Texas Appraiser Licensing and Certification Board, offered comments concerning how the new requirements impact an appraiser. After discussion, the board instructed Mr. Thorburn to send a letter to HUD stating the concerns that TREC has for its licensees and the consumers of Texas due to the new regulations. Jan Agee, real estate broker in Arlington, offered comments concerning the HUD documents.

Mr. Brummett moved to agenda item thirteen, discussion and possible action concerning licensee contractual relationships with service providers. Abraham W. Tieh, Buyers Agents Realty, spoke concerning possible conflicts of interest concerning licensees who are licensed as mortgage brokers or agents and originating loans on transactions where they are representing the buyer as a real estate broker or salesperson. Comments were also offered by Ron Walker, general counsel Texas Association of Realtors.

The Chairman moved to agenda item fourteen, discussion and possible action to authorize Mia T. Nieman to act as custodian of records and to delegate authority to Wayne Thorburn to act under Texas Civil Statutes, Article 6573b §3, The Residential Service Company Act. Mr. Austin, seconded by Mr. Brodie, moved to grant authorization as requested. The motion was adopted by unanimous vote.

Chairman Brummett moved to agenda item fifteen, discussion and possible action to approve the operating budget for FY 2000. Mr. Waters presented the agenda item for discussion. After discussion, Mr. Brodie, seconded by Ms. Sutton, moved to approve the operating budget for FY 2000.

Mr. Brummett moved to agenda item sixteen, discussion and possible action to approve

revised questions and answers relating to Texas Civil Statutes, Article 6573a and related matters. There was discussion on the questions concerning branch offices, the selling of mobile homes and referrals. After discussion, Ms. Sutton, seconded by Mr. Cantu, moved to have all of the questions having to do with referrals to be amended as requested. The motion was adopted by unanimous vote.

Chairman Brummett moved to agenda item seventeen, consideration of complaint information. Ms. DeHay requested authorization for the Enforcement Division to proceed with investigations on the following persons for failure to provide information in connection with their license renewals- Evelyn Gomez Bartish; Darrell Glen Beakley; Joseph Len Breault; Dwight L. Chapman; Sylvia Castillo Davis; Joe A. Guerrero; Leonard Nathaniel Jones; Laurie Ann Junewick; Jean B. Klinefelter; Judy K. Leblanc; Carol Ann Bemis Mahar; Debi Travis Musick; Ronnie Ireneo Nasis; Phillip Lee Price; and Susan Elizabeth Singer. Ms. Sutton, seconded by Mr. Austin, moved to authorize investigations as requested. The motion was adopted by unanimous vote.

Ms. DeHay requested authorization for the Enforcement Division to proceed with investigations on the following persons for failure to comply with the new requirements of Commission rule 22 TAC §535.92(h) for not completing their MCE hours in a timely fashion: Robert Basil Baldwin; Robert Lee Carroll; Kelley Ann Engstrom; Nicholas C. Fletcher; Joseph Edward Gearheart; John Michael Landon; Meredith Jane McCord; Elizabeth T. Pabst ; Howell Ray Phelps; Verle Antoinette Proctor; Vollie George Ray; Jesus Reza; Ann Elizabeth Wukasch. Ms. Mayfield, seconded by Ms. Sutton, moved to authorize investigations as requested. The motion was adopted by unanimous vote.

Ms. DeHay requested authorization for the Enforcement Division to proceed with investigations on the following persons for possible violations of sections 15(a)(6)(F) and (S) of The Real Estate License Act, Article 6573a, Texas Civil Statutes: Gerald Keith Crow; Kay Jernigan Urban. Ms. Mayfield, seconded by Mr. Austin, moved to authorize investigations as requested. The motion was adopted by unanimous vote.

Chairman Brummett moved to agenda item eighteen, Motion for Rehearing in Hearing No. 99-74-990048, In the Matter of Wayne Victor Slater. The Chairman recused himself and turned the gavel over to the vice-chairperson, Ms. Mayfield. Ms. Mayfield turned the gavel over to Commissioner Cantu, the presiding member. Mr. Cantu announced a pre-hearing conference from 11:27 a.m. until 11:47 a.m. Mr. Slater was represented by Mark Hanna, attorney, and the Enforcement Division was represented by Beverly Rabenberg, staff attorney. Mr. Hanna withdrew the motion for rehearing and the first amended motion for rehearing. After discussion, Ms. Sutton, seconded by Mr. Cantu, moved

to hear the first amended motion. Mr. Hanna presented the first amended motion for modification and the first amended motion for probation for consideration. Ms. Rabenberg presented the Enforcement Division's answer to the motion for modification and motion for probation.

Mr. Cantu called for a vote on the motion for modification. Mr. Austin, Ms. Mayfield, Mr. Brodie, Ms. Sutton and Mr. Jokl voted in favor of the motion. Mr. Cantu voted against the motion. The motion was granted. Mr. Moseley requested that the Enforcement Division be instructed to prepare an order for Mr. Cantu's signature. Mr. Cantu agreed. Mr. Brummett reentered the meeting and the gavel was returned to the Chairman.

The Chairman moved to agenda item twenty, scheduling of future meetings. After discussion, meetings were scheduled for December 13, 1999, February 7, 2000, March 27, 2000, May 8, 2000, June 22, 2000, and August 7, 2000. Mr. Brodie, seconded by Ms. Sutton, moved to schedule the meetings as stated. Mr. Austin made a friendly amendment to change the August 7<sup>th</sup> meeting to August 14<sup>th</sup>. The amendment was accepted. The motion as amended was adopted by unanimous vote. The next regularly scheduled meeting of the Commission is December 13, 1999. Ms. Mayfield, seconded by Ms. Sutton, moved to adjourn the meeting. The meeting was adjourned at 1:05 p.m.

APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 1999.

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Chairman

ATTEST: \_\_\_\_\_  
Administrator